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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,196	01/14/2004	Mohinder Singh	CU-3535 BSE	3585
26530	7590	10/19/2005	EXAMINER	
LADAS & PARRY LLP 224 SOUTH MICHIGAN AVENUE SUITE 1600 CHICAGO, IL 60604			CRAIG, PAULA L	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/757,196

Applicant(s)

SINGH, MOHINDER

Examiner

Paula L. Craig

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2004 and 12 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 2-4 and 6-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-9 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>06/17/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains Claims 7-9 drawn to an invention nonelected without traverse in the reply filed September 12, 2005. A complete reply to the present rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
2. Claims 2-4 and 6 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on September 12, 2005.

Drawings

3. The drawings are objected to because reference number 15 is not clearly indicated, and reference numbers 14 and 20 in Fig. 1, and 18, 20, and 29, in Fig. 2, lack lead lines. In addition, please see the enclosed Form PTO-948. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary,

the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,816,804 to Fischer.

6. For Claim 1, Fischer '804 teaches an applicator for treating mouth pain (see syringe 10, Figs. 4-5 and col. 4, lines 22-24). The applicator of Fischer '804 includes a generally cylindrical container having a fluid reservoir therein (see col. 4, lines 31-33). A dispensing orifice is at one end of the container in fluid communication with the reservoir (see outlet orifice 48 of delivery tip 14, Figs. 3-5, col. 4, lines 44-47 and col. 5, lines 56-59). A plurality of soft bristles protrude outwardly from the orifice acting as a partial

closure for the orifice (see bristles 50 of Figs. 2A-3 and col. 6, lines 1-9 and 27-30). The bristles act as an applicator for fluid in the reservoir (see col. 6, lines 15-19). A means is included for forcing fluid from the reservoir to the bristles (plunger 22, Figs. 4 and 5, and col. 4, lines 44-50). Fischer '804 teaches a composition contained in the reservoir (col. 4, lines 33-38). The composition is capable of treating mouth pain (col. 4, lines 33-38 and col. 7, line 57 to col. 8 line 2). Note that treating mouth pain may be accomplished through application of sealing agents, antimicrobial agents, making impressions, and the like.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,816,804 to Fischer in view of U.S. Patent No. 2,193,489 to Nevin.

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10. For Claim 5, Fischer '804 teaches all the limitations of Claim 1, as described above in paragraph 6. Fischer '804 also shows the means for forcing fluid from the reservoir being a piston (see plunger head 26, Figs. 4 and 5, and col. 4, lines 44-52). The piston is disposed at the opposite end of the container from the orifice (Figs. 4 and 5). A piston rod is connected to the piston and directed away from the reservoir (plunger head 26 and plunger 22, Figs. 4 and 5, and col. 4, lines 44-52). A cylinder is located at the end of the container opposite to the bristles (plunger 22 and circular flange 24, Figs. 4 and 5 and col. 4, lines 45-52). Fischer does not expressly teach the cylinder being rotatable. However, it is well known to rotate the cylinder of a syringe to cause movement of the piston rod and piston towards the reservoir to force fluid therefrom; most syringes in use today have a cylinder which is capable of being rotated to force out fluid, whether or not screw threads or the like are present. Nevin confirms this and teaches a syringe having a cylinder which is expressly rotatable to cause movement of the piston rod and piston towards the reservoir to force fluid therefrom (knurled portion 23, plunger rod, and plunger 4, Figs. 3 and 4 and page 2, right column, lines 24-50). The syringe of Nevin is suitable for mixing and dispensing a liquid (page 2, left and right columns). It would have been obvious to one of ordinary skill in the art to modify the device of Fischer to include a cylinder which is rotatable to force out fluid, as taught by Nevin, for mixing and dispensing a liquid.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Nos. 576,898 to Santee and 590,405 to Sieghortner show shaving brushes which use a screw mechanism to force a liquid through the bristles. U.S. Patent No. 3,499,686 to Landen et al. teaches a brush with a smooth central passage for applying a pomade. U.S. Patent No. 4,486,109 to Rosofsky teaches a toothbrush which may be used to apply a topical anesthetic. U.S. Patent Nos. 4,997,371, 5,269,684, and 6,450,810 to Fischer and 6,390,817 to Jensen show syringe-type dental agent applicators with bristles at the tip. U.S. Patent No. 5,393,153 to Bouthillier et al. shows a toothbrush with a fluid dispensing reservoir. U.S. Patent No. 5,829,976 to Green teaches a dental brush with a flow-through fibrous tip for applying a topical anesthetic. U.S. Patent No. 5,843,042 to Ren shows a metered syringe for oral medicine with a screw operated plunger. U.S. Patent No. 6,423,750 to Johnson shows a brush-tipped applicator with a reservoir for applying topical medications to cold sores and the like, which may include benzocaine, PEG, parabens, silica, etc. The remaining prior art references listed on the accompanying Form PTO-892 show the general state of the art.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571)272-5964. The examiner can normally be reached on 8:30AM-5:00PM M-F.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva, can be reached at (571)272-1115. The fax phone

number for the organization where this application or proceeding is assigned is 703-872-9306.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paula L Craig
Examiner
Art Unit 3761

PLC

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

